***IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH***

***Crl. Revision No.696 of 2002***
***Date of Decision:February 02, 2010***

***Rupinder Kumar .....Petitioner***

***Versus***

***State of Punjab and Sunil Periwal .....Respondents***

***Coram: Hon'ble Mrs. Justice Sabina***

***Present:*** Mr.K.S.Sidhu, Advocate
for the petitioner.

Mr.J.S.Sandhu,Assistant Advocate
General, Punjab

Mr.Peeush Gagneja,Advocate
for the complainant

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***Sabina, J.***

Petitioner-Rupinder Kumar was convicted for an offence under Section 138 of the Negotiable Instruments Act, 1881 (`the Act' for short) by the Judicial Magistrate Ist Class, Abohar in a complaint filed by complainant-Sunil Pariwal, respondent No.2 vide judgment and order dated 18.8.2000. Accused was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.50,000/- under Section 138 of the Act by the trial Court and in default of payment of fine, he was further directed to undergo rigorous imprisonment for another two months. Aggrieved by the same, petitioner preferred an appeal and the same was

dismissed by the Additional Sessions Judge, Ferozepur vide judgment dated 20.3.2002. Hence, the present revision petition has been filed by the petitioner.

Brief facts of the case, as noticed by the appellate Court in paras 2 to 4 of its judgment, are reproduced here in below:-

> "The facts giving rise to the filing of the complaint under Section 138 of the Negotiable Instruments Act before the Ld. Magistrate are that the accused/appellant Rupinder Kumar being the proprietor of firm M/s Rupinder Agro Traders used to deal in the business of wholesale pesticides with firm M/s Shiv Nrain Periwal and Sons. Accused Rupinder Kumar, who is the sole proprietor of firm M/s Rupindra Agro Traders, Mandi No.2, Abohar was doing the business of the retail selling of pesticides. He has been purchasing pesticides from the complainant firm on credit time to time and as such, an account in the name of the accused firm was opened in the account books of the complainant firm. As per the entries appearing in the account books of the complainant firm, which are being maintained regularly in the ordinary course of its business, the accused was to pay some amount of it. To discharge its legal liability, he issued three different cheques dated 2.2.98 for Rs.44927.12 paise, 42034.86 paise and Rs.33695.34 paise drawn on Punjab National Bank in favour of the complainant firm, but when the said cheques were presented for encashment, all these cheques were dishonoured on 14.2.98, on the ground that credit in the account of the firm on the accused was insufficient to honour the cheques. Accordingly, notice as required under

Section 138 of the N.I. Act was served upon the accused, which was duly received by him on 20.2.98, but despite that fact, the payment of the dishonoured cheques was not made within the stipulated time or thereafter. Hence, the complainant was constrained to file the complaint under Section 138 of the N.I Act.

3.The Ld.Trial Magistrate on the base of evidence led by the complainant at preliminary stage summoned the present appellant/accused to face trial under Section 138 of the N.I.Act vide Order dated 16.1.1999.

4. On appearance of the accused in the trial Court, he was supplied with the copies of documents as required under Section 207 Cr.P.C. There being a prima-facie evidence appearing against him for the commission of offence under Section 138 of N.I. Act, he was served with a notice by the Ld. Magistrate on 9.7.99 to which he pleaded not guilty and claimed trial."

After hearing the learned counsel for the parties, I am of the opinion that the present petition deserves to be dismissed.

The cheques in dispute are Exhibit C4 to Exhibit C6 amounting to Rs.33695.34, Rs.42034.86 and Rs.44927.12 respectively. Admittedly, the said cheques are signed by the petitioner.

Learned counsel for the petitioner has submitted that the blank cheques in question were signed by the petitioner by way of security and hence, the conviction of the petitioner was liable to be set side. In support of his argument, learned counsel has placed reliance on M.S.Narayana Menon @ Mani vs. State of Kerala and another 2006(2) Apex Court Judgments 411 (SC) wherein it has been held as under:-

> "We in the facts and circumstances of this case need not go into the question as to whether even if the prosecution fails to prove that a large portion of the amount claimed to be a part of debt was not owing and due to the complainant by the accused and only because he has issued a cheque for a higher amount, he would be convicted if it is held that existence of debt in respect of large part of the said amount has not been proved. The Appellant clearly said that nothing is due and the cheque was issued by way of security. The said defence has been accepted as probable. If the defence is acceptable as probable the cheque therefore cannot be held to have been issued in discharge of the debt as, for example, if a cheque is issued for security or for any other purpose the same would not come within the purview of Section 138 of the Act."

However, there is no force in the argument raised by the learned counsel for the petitioner. The petitioner had failed to establish his plea that the blank cheques in question had been issued by way of security. It was for the petitioner to establish that the cheques had been issued for security purposes and further that no amount was due towards the complainant. Learned counsel for the petitioner has failed to point out that it was put to the complainant during cross-examination that the cheques in question had been issued for security or for any other purpose. The judgment relied upon by the learned counsel for the petitioner, thus, fails to advance the case of the petitioner. In the present case, the cheques in question bear the signatures of the petitioner. Hence, the presumption arises that they have been issued for discharge of a liability. Both the Courts below had, thus, rightly convicted and sentenced the petitioner under Section 138 of the Act.

No ground for interference is made out.

Dismissed.

**(Sabina)**
**Judge**

**February 02, 2010**

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